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No. 96-919

In The

Supreme Court of the United States

October Term, 1996

STATE OF ARKANSAS,

Petitioner,

v.

EUGENIA T. DONOVAN, ARKANSAS TERM LIMITS, FRANK GILBERT, AND SPENCER G. PLUMLEY,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Arkansas

BRIEF AMICUS CURIAE OF THE STATES OF NEBRASKA, COLORADO, SOUTH CAROLINA AND SOUTH DAKOTA IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE

This case involves the right of the people of the States to require that ballot information be provided to voters when such information relates to specific action taken by State and Federal legislators regarding an amendment to the United States Constitution.

As Attorneys General of our respective States we respectfully request this Honorable Court grant certiorari in the above titled case. The Court should resolve this critical issue as soon as possible in order to avoid leaving a patchwork of laws throughout the country regarding the power of the people to place information on ballots. As Attorneys General of our respective States, we will likely be, and in some cases have already been, called upon to defend, interpret or otherwise provide advice concerning provisions similar to that passed by the people of Arkansas.

The Court should resolve this important issue in favor of the State of Arkansas in order to preserve government of the people, by the people and for the people, and because a contrary decision would disregard the historical practice in the States regarding the placement of language on the ballot concerning the adoption of amendments to the United States Constitution.

SUMMARY OF ARGUMENT

At issue in this case is the right of the people of the States to express their collective will to their elected representatives as to a proposed amendment to the

United States Constitution. The provision in question expresses the will of the people as to the adoption of a federal term-limits amendment and does not usurp the authority of the State Legislatures or Congress to propose constitutional amendments or make application for a constitutional convention. The Arkansas amendment is a nonbinding advisory instruction to legislators and members of Congress expressing the wishes of the State's voters. Unlike previously invalidated provisions in other States, the amendment would not affect the salary of legislators nor would it limit, proscribe or mandate the terms of debate or deliberation.

Under the amendment, ratification would still depend on the vote of the State Legislatures. A State's elected representatives could still vote however they deem appropriate. Their current term of office would not be affected in any manner, nor would any punitive measure of any kind be imposed during their term of office. The only consequence of failing to follow the voters instructions under the amendment is to have factual information placed on the ballot at the next election informing voters of the position of the candidates who are seeking a new term in office.

Extensive historical precedent involving the use of ballot language to inform voters of candidate's positions on constitutional amendments, including the Seventeenth Amendment, demonstrates that such expressions of popular will have never been thought to violate Article V. On the contrary, such expressions of the people's will are legitimate means to communicate with elected representatives in order to ensure government of the people, by the people and for the people.

ARGUMENT

I. BACKGROUND

In 1995, the Court invalidated term limit amendments adopted by the voters of twenty-three (23) States. *U.S. Term Limits v. Thornton*, ___ U.S. ___, 115 S.Ct. 1842 (1995). The Court concluded that an amendment to the U.S. Constitution would be required before term limits could be imposed on members of Congress. *Id.* at 1871. Subsequently, a movement to encourage adoption of such an amendment began nationwide. On November 5, 1996, the voters of the State of Arkansas approved a state constitutional "term limits" amendment by a 61% to 39% margin. The voters of the States of Nebraska, Alaska, Colorado, Idaho, Maine, Missouri, and South Dakota also passed similar amendments at the same election (hereinafter the "Amendment"). The Amendment instructs each State's legislators and members of Congress to use the powers of their offices to support an actual Congressional term-limits amendment to the United States Constitution. The Amendment also requires the Secretary of State of each state to place statements on the next election ballot informing voters whether candidates have failed to take specific action supporting a federal term-limits amendment. This ballot language provision is similar to a method utilized by a number of States early in this century to encourage adoption of the Seventeenth Amendment which instituted direct election of U.S. Senators. *See, e.g.*, 1909 Laws of Neb., ch. 51, at 253.

Prior to the November 1996 election, term limit opponents in Arkansas challenged the Amendment, and the

Arkansas Supreme Court held that the Amendment violated federal constitutional provisions contained in Article V of the U.S. Constitution pertaining to the method of proposing constitutional amendments. *Donovan v. Priest*, 931 S.W.2d 119 (Ark. 1996). This Court, however, granted a stay of the decision on November 2, 1996, (on a 7-2 vote) and the election proceeded. *Arkansas Term Limits v. Donovan*, 117 S.Ct. 380 (1996). The State of Arkansas and Arkansas Term Limits are now seeking review of this matter. The outcome of the case may well decide the future of the term limits movement.

II. ARTICLE V DOES NOT PROHIBIT THE PEOPLE FROM EXPRESSING THEIR COLLECTIVE WILL TO THEIR LEGISLATORS.

The issue for which review is sought is whether, consistent with Article V of the United States Constitution, the people of a State may issue instructions to their State legislators and Congressional delegation directing them to use the powers of their offices to support a term-limits amendment to the United States Constitution, and whether the people may place on the ballot information about the absence of such support.

When the Arkansas Supreme Court reviewed this matter it framed the issue as "whether [the] Amendment . . . reserves to the *people* of the State of Arkansas the power to propose amendments to the United States Constitution and to make application to Congress for a constitutional convention." *Donovan v. Priest*, 931 S.W.2d at 125. (emphasis added). The court found that the amendment violated the provision in Article V of the U.S.

Constitution that all proposals of amendments to that Constitution must come either from *Congress* or state *legislatures* – not directly from the *people*. *See Hawke v. Smith*, 253 U.S. 221 (1920).

The correctness of the Arkansas Supreme Court's decision, and thus the constitutionality of the Amendment, depends upon whether the Amendment usurps the authority of the State Legislatures and the Congress to propose constitutional amendments and make application for a constitutional convention, or whether it merely expresses the will of the people without compelling a course of action.

When one examines the text of the Amendment and compares it to the provisions at issue in the cases cited by the Arkansas Supreme Court, it becomes clear that the Arkansas Supreme Court's decision is erroneous. Its conclusions are based on false premises and mischaracterizations. The court's decision is premised on its assertion that the Amendment is no different than invalidated provisions in other States which cut legislative salaries or forced perpetual legislative sessions if legislators failed to adopt a specific proposal. The court concluded that the Amendment allows the people to usurp the authority of Congress and State Legislatures. *Donovan v. Priest*, 931 S.W.2d at 127. On the contrary, the Amendment is a *nonbinding* instruction to legislators and members of Congress expressing the wishes of the State's voters. Such expressions of the people's will are not unconstitutional. *See Kimble v. Swackhamer*, 439 U.S. 1385, 1387 (1978) (Rehnquist, J. as Circuit Justice). Under the Amendment, ratification would still depend on the vote of the State Legislatures. A State's elected representatives could still

vote however they deem appropriate. Their current term of office would not be affected in any manner. Their salary would not be affected. *Compare AFL-CIO v. March Fong Eu*, 686, P.2d 609 (Cal. 1984) (invalidating initiative calling for legislature to seek federal balanced budget amendment on penalty of loss of salary). No punitive measure of any kind would be imposed during their term of office. No debate or deliberation would be limited, proscribed or mandated. *See State ex rel. Harper v. Waltermire*, 691 P.2d 826, 829 (1984) ("The stricken ballot measure would compel the Legislature to reach a specific result under threat of confinement and no pay.").

The only consequence of failing to follow the voters' instructions under the Amendment is to have factual information placed on the ballot at the next election informing voters of the position of the candidates who are seeking a *new* term in office.

The Arkansas Supreme Court characterized this descriptive ballot language as "threatened political death." However, the effect, if any, relates only to a *future* term of office – something to which no candidate (incumbent or otherwise) has an entitlement. (Compare, e.g., resign-to-run laws; laws prohibiting primary losers from running in the general election by petition; state term limit laws; campaign finance disclosure laws; political primary rules; minimum primary vote requirements, etc.).

Expressions of popular will cannot be equated with usurping the constitutional authority of the Congress or State legislatures. In *Hawke v. Smith*, 253 U.S. 221 (the case relied upon most heavily by the Arkansas Supreme

Court), the Court discussed the impermissibility of ratification of constitutional amendments directly by the people rather than by the Legislature. To support its position that a "Legislature" is a representative body and does not include a referendum by the people, the Court referred to the process for the adoption of the then recently ratified Seventeenth Amendment which provided for the direct election of U.S. Senators by a vote of the people. "It was never suggested, so far as we are aware, that the purpose of making the office of Senator elective by the people could be accomplished by a referendum vote." *Id.* at 228. The legal significance of this statement is apparent upon review of its historical context.

As the Court was unquestionably aware, the ratification of the Seventeenth Amendment was accomplished with the aid of numerous state laws similar in purpose to the Amendment now at issue in this case. *See, infra, Section B.* In fact, by 1912, 29 of the 48 states had provisions in place for selecting the people's choice for U.S. Senator. *See* Ronald R. Rotunda, *The Aftermath of Thornton*, 13 Const. Comm. 201, 207 (Summer 1996). In light of the Supreme Court's choice of the ratification of the Seventeenth Amendment as an example, it seems clear that while the Court saw direct ratification of constitutional amendments by means of a popular referendum as impermissible, it saw nonbinding "instructions" to legislators and ballot language provisions as being in a different category.

Furthermore, it can hardly be assumed that voters would not be made aware of candidates' positions on term limits during a campaign anyway. Failure of an

elected official to follow voter instructions regarding term limits would be "political death" only if the *voters* wanted it to be. Under the Amendment, as in *Kimble v. Swackhamer*, 439 U.S. at 1388, "each member of the . . . Legislature is free to obtain the views of constituents in the legislative district which he represents. . . . " The Arkansas Supreme Court apparently assumes that voters cast their ballots based on only one issue, and that they will automatically vote against term limit opponents. History shows, however, that many anti-term limit candidates are elected or re-elected despite overwhelming support for term limits in their States. Thus, what political impact such ballot language may have is not only speculative, but is beyond the proper scope of judicial review under Article V.

In sum, the Arkansas Supreme Court apparently believes that providing factual information to voters so that they can intelligently exercise their elective franchise amounts to "threatened political death." Some, however, would simply call this participatory democracy. In any event, nothing in Article V of the U.S. Constitution prohibits the people from expressing their collective will, and then holding their representatives accountable in future elections as to whether they acted to implement the people's wishes. *Kimble v. Swackhamer*, 439 U.S. at 1387 (1978).

A. States Have Previously Used The Ballot To Provide Voters With Information Regarding A Candidate's Position On Constitutional Amendments.

Article V of the United States Constitution has not historically been interpreted as preventing the placement of information on the ballot when such information relates to a constitutional amendment.

The matter of candidates' positions on constitutional amendments has long been a vital component in American politics and has historically been part of the candidate selection process.[1] Indeed, States utilized ballot

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[1] The 1996 Republican Party Platform established as one of its principles, a "Balanced Budget Amendment to the Constitution." *The Republican Party Platform 1996*, at 3. Throughout the course of the history of this country, the various parties have supported various constitutional amendments in their party platform. These can be found in *National Party Platforms*, University of Illinois Press. A few selections from volume II of that collection include: Socialist Party Platform of 1960 (Constitutional amendment guaranteeing the right of ready ballot access in all states to minority political parties) at 630, Democratic Party Platform of 1964 (Constitutional amendment giving the District of Columbia voting representation in Congress) at 648, Republican Party Platform of 1964 (Constitutional amendment regarding free exercise of religion and apportionment of one state house on factors other than population) at 683, and 686, American Independent Platform of 1968 (Constitutional amendment requiring federal district judges to face retention elections) at 702, Democratic Platform of 1968 (Constitutional amendment giving the District of Columbia voting representation in Congress) at 741, American Platform of 1972 (Constitutional amendment regarding the election of federal district judges and other judicial changes) at 770.

information to ratify the Twenty-First Amendment which is the only amendment to the United States Constitution ratified by state conventions. The State of Alabama, for example, in order to ensure proper voting on the passage of the Twenty-First Amendment, provided that those eligible to attend the convention for ratification must sign a pledge to abide by the non-binding vote of Alabama's voters. In *In re Opinion of the Justices*, 148 So. 107, 109-10 (Ala. 1933), the Alabama Supreme Court, upheld this legislation noting that

> [k]eeping in view the fundamental doctrine of a government of the people, by the people, and for the people, we are unable to see in the Federal Constitution any purpose to prohibit a direct and binding instruction to the members of the convention voicing the consent of the governed, . . .

Id. at 111. Thus, Alabama, like many other States, elected its convention delegates, knowing that they were pledged to act as the Alabama voters had requested.

In other States as well, the nomination of delegates to ratifying conventions for amendments to the United States Constitution require candidates to include a statement in their petition regarding whether they oppose or favor ratification of the proposed amendment. In Arizona, for example, nominations for delegates to State ratifying conventions for amendments to the United States Constitution must be without party or political designations. However, the nomination petitions must have a statement by the candidate that the candidate either favors or opposes ratification of the amendment to the U.S. Constitution. Furthermore, a delegate who is

elected based on a platform or nomination petition statement favoring or opposing ratification must vote in accordance with that platform or statement at the convention; otherwise, that delegate is guilty of a misdemeanor, and the delegate's vote will not be considered.[2]

In the State of Washington, candidates for election as a delegate to a ratifying convention must file a "declaration of candidacy." This "declaration" must include a

> sworn statement of the candidate that he is either for or against, as the case may be, the amendment which will be submitted to a vote of the convention and that he will, if elected as a delegate, vote in accordance with his declaration. The form shall be so worded that the candidate must give a plain unequivocal statement of his views as either for or against the proposal upon which he will, if elected, be called upon to vote.[3]

The approach taken by States like Alabama with respect to the Twenty-First Amendment, and with States like Arizona and Washington with respect to ratifying conventions for constitutional amendments was not and is not unique. A similar technique had been used by the

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[2] Ariz. Rev. Stat. Ann. §§ 16-703(C), 16-704(A), 16-705(C) (1996).

[3] Wash. Rev. Code § 29.74.060 (1993).

For states with similar provisions *see* **Del.** Code Ann. tit. 15, § 7706; **Fla.** Stat. Ann. § 107.04(1) (West 1997 Cum. Supp.); **Idaho** Code Ann. § 34-2205 (Michie 1995); **Ind.** Code §§ 3-10-5-7 and 3-10-5-9 (Michie 1996); **Mont.** Code Ann. § 13-26-103 (1995); **Ohio** Rev. Code Ann § 3523.04 (Anderson 1996); **S.D.** Codified Laws § 2-15-4 (Michie 1992); **Utah** Code Ann. § 20A-15-103 (Michie 1995); **Vt.** Stat. Ann. Title 17, § 1814 (Equity 1982).

States as a means for getting the Seventeenth Amendment passed.

B. Common Practice Leading To The Seventeenth Amendment Contradicts the Arkansas Supreme Court's Decision.

By the late 1800's, there was growing discontentment among the states regarding the selection of United States Senators by State legislatures, rather than directly by the people. Despite this evident discontentment, Senators, who owed their position to the State legislators, rather than the people, failed to send a proposed amendment calling for the direct election of United States Senators to the States. This was in spite of the fact that the United States House of Representatives had passed such an amendment several times before. Due to the Senate's continuing failure to act upon the increasing popular demand for the direct election of Senators, the States were forced to take action.

The State of Oregon established the precedent that other states followed when, in 1904, Oregon adopted a "direct" primary law through the people's Initiative and Referendum power. Candidates who wanted to have their name placed on the primary election ballot for the nomination for an office had to file a petition in which the candidates were allowed to include a statement not to exceed one hundred words, and on the ballot, after the candidate's name, a statement not to exceed twelve

words which would convey to voters the candidate's "measures or principles he especially advocates."[4]

Upon being nominated, besides having a statement regarding the principles that the nominated candidate supported and would advocate, the candidate could also sign his name to one of two statements which would appear on the ballot by the candidate's name. Statement Number 1 read,

> I further state to the people of Oregon, as well as to the people of my legislative district, that during my term of office, I shall always vote for that candidate for United States Senator in Congress who has received the highest number of the people's votes for that position at the general election next preceding the election of a Senator in Congress without regard to my individual preferences.

Statement Number 2 read,

> During my term of office I shall consider the vote of the people of the United States Congress as nothing more than a recommendation which I shall be at liberty to wholly disregard if the reason for doing so seems to me to be sufficient.[5]

Moreover, in 1908, supporters of the direct election of Senators submitted another bill to the people of Oregon by way of the Initiative which passed. This bill stated:

> Be it enacted by the people of the State of Oregon: SECTION 1. That we, the people of the

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[4] 45 CONG. REC. 5823, 5826 (1910).

[5] Oregon Primary Law, 1904.

> State of Oregon, hereby instruct our representatives and senators in our legislative assembly, as such officers, to vote for and elect the candidates for United States Senators from this State who receive the highest number of votes at our general election.

With the passage of this bill, the people of Oregon succeeded in conveying their choice for U.S. Senator to the Oregon State legislature and in having the Oregon State legislature vote for the people's choice.

In addition to Oregon, the State of Idaho enacted a primary election law in 1909. Idaho's primary election law allowed candidates for the nomination for state legislative office to sign a "declaration" with their nomination papers which stated, in part, that if elected to the state legislature, the candidate would "always vote for the candidate for the United States Senator who has received a majority for the first choice votes upon my party ticket . . . "[6] If the candidate made such a declaration on the nomination papers, on the official primary ballot near the candidate's name would appear, "Pledged to vote for party choice for U.S. Senator."[7]

Nebraska took a similar step in its primary election law when it allowed candidates for the state legislature to sign a Statement Number One or a Statement Number Two identical to Oregon's on their nominating petitions. Candidates who signed Statement Number One would have printed after their names, "Promises to vote for the

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[6] Idaho Session Laws, House Bill No. 16 (1909).

[7] *Id.*

people's choice for the United States Senator." The candidates who had signed Statement Number Two would have printed after their names, "Will not promise to vote for people's choice for United States Senator."[8]

Similarly, under Illinois' Primary Election Law of 1909, section 29, for candidates for the U.S. Senate who wanted to have their names appear on the primary ballot, the last sentence of Section 29 provided, "that the vote upon candidates for United States Senator shall be had for the sole purpose of ascertaining the sentiment of the voters of the respective parties in the State as a whole and not by Senatorial districts."[9]

North Dakota had a similar provision. In *State v. Blaisdell*, 118 N.W. 141, 145 (N.D.1908), the North Dakota Supreme Court upheld the provisions of North Dakota's primary election law which allowed the voters of each party to express their choice for Senator. The court stated, "It merely permits an expression of choice by the voters, and its provisions, in effect, provides a convenient method of exercising the constitutional right of petition." *Id.* at 147.

Furthermore, in *State v. Fear*, 125 N.W. 961 (Wis. 1910), the Wisconsin Supreme Court ruled that the Wisconsin primary law did not require the candidates to pledge themselves to support any particular nominee. The Wisconsin Supreme Court concluded that,

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[8] 1909 Laws of Neb., ch. 51, at 253.

[9] 1909 Ill. Laws 46, 58-59.

> Construing the law as imposing no legal obligation on the part of any member of the Legislature to vote for his party nominee at the primary, we must assume that the legislators will vote according to their consciences and convictions, giving due weight to the advisory vote of the people, and that therefore neither the letter nor the spirit of the Constitution has been transgressed.

Id. at 972. Finally, like the North Dakota Supreme Court, the Wisconsin Supreme Court referred to the citizens' right to petition. The court explained that every citizen had a right to tell the legislature who their choice was for Senator and to ask the legislature to choose that candidate. Although imposing no obligation on the state legislators to follow what their constituents' choice was, the court noted that the state legislators should consider such information "advisory." *Id.*

These provisions adopted by the various States ultimately led to the proposal and ratification of the Seventeenth Amendment, arguably the last amendment adopted where the interests of the politicians were directly adverse to that of the citizenry.

In sum, the people of the States sometimes wish to use ballot information in order to allow voters to cast informed votes on important issues. When the voters use ballot information that does not involve otherwise unconstitutional discrimination, it should be permitted. The historical precedent established prior to the passage of the Seventeenth Amendment, as well as current State

practice regarding the nomination of delegates to ratifying conventions, demonstrate that no constitutional barrier has heretofore been thought to prevent the people from requiring that information be provided to voters regarding candidates' positions on constitutional amendments.

C. Descriptive Ballot Language Is Commonly Used By The States And Takes On Many Forms.

In analyzing the issue in this case, one must avoid the temptation to confuse familiarity with constitutional law. It should be noted that the very existence of a state-printed ballot is a legislative innovation of the States. As this Court has pointed out, "until the late 1800's, all ballots cast in this country were write-in ballots. The system of state-prepared ballots, also known as the Australian ballot system, was introduced in this country in 1888 . . . Prior to this, voters prepared their own ballots or used preprinted tickets offered by political parties." *Burdick v. Takushi*, ___ U.S. ___, 112 S.Ct. 2059, 2070 (1992).

As to ballots for Congressional elections, Article I, § 4, cl. 1 of the U.S. Constitution provides that States may prescribe "The Times, Places and Manner of holding Elections for [U.S.] Senators and Representatives. . . . " This provision expressly authorizes the States to regulate the manner of its elections for members of Congress. *See Burdick v. Takushi*, 112 S.Ct. 2059, 2063 (1992). Under this provision, how States conduct their elections is within their discretion so long as they do not violate some other provision of the U.S. Constitution. *See infra, Section II. See also U.S. Term Limits*, 115 S.Ct. at 1868 (invalidating ballot

access restrictions deemed to constitute additional qualifications in violation of Article I); *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214, 222 (1989).

The amendment in question states in its opening clause that its purpose is to inform voters regarding candidates' positions on Congressional term limits. States may generally enact ballot regulations which help the electorate make informed decisions. In fact, this Court has held that " *'there can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will. . . .'* " *Tashijian v. Republican Party of Connecticut*, 479 U.S. 220, 107 S.Ct. 544, 551 (1986) (quoting *Anderson v. Celebrezze*, 460 U.S. at 796) (emphasis added). Significantly, the Court made this statement in the context of its discussion of the role of political party labels on election ballots. Political party labels are themselves a form of descriptive ballot language. The Court noted that "to the extent that *party labels provide a shorthand designation of the views of party candidates on matters of public concern*, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise." *Id.* at 552 (emphasis added). *See also Twin Cities Area New Party v. McKenna*, 73 F.3d 196, 200 (8th Cir. 1996), *cert. granted* 116 S.Ct 1846 (1996) ("The Supreme Court has recognized that party labels provide a shorthand designation of the views of party candidates on matters of public concern. . . . ").

Descriptive ballot language in the form of political labels is placed on ballots in every partisan political race by State statute. *See, e.g.*, Neb. Rev. Stat. §§ 32-809, 814, 815 (1994). Many State laws provide that nonpolitical

candidates go on the ballot only as individuals, while political candidates are listed with their party label and petition candidates are designated on the ballot as having been nominated by petition.

It is important to note that political parties are not part of our constitutional framework, and have no constitutional basis beyond the right of political association. Placement of party labels on ballots is a form of descriptive language meant to inform voters. Voters have long been accustomed to descriptive language such as "Democrat" or "Republican" following candidates' names. Some past political party names were even more descriptive, such as "Free Silver", "Socialist Workers", "People's Independent", or "Prohibition." New party names are also often descriptive, such as "Reform" and "Green." A candidate could, if otherwise qualified, run on the "Term Limit" ticket or the "Experience Counts" ticket. Party names are intentionally chosen to convey a message to voters. In the case of the major parties, they provide the voter at least a general idea of where the candidate stands on a wide variety of issues.

We also note that this Court has held that political candidates can be required by law to disclose where their campaign money comes from and how it is spent. *Buckley v. Valeo*, 424 U.S. 1, 66 (1976). Although this information is not printed on the ballot, it is nonetheless required by law to be supplied to voters for the purpose of assisting them in identifying the philosophy of the candidate. The Court stated, "disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid voters in evaluating those who seek federal office. *It*

allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches." *Id.* at 66-67 (emphasis added). Similarly, the Court stated, "In many situations the label 'Republican' or 'Democrat' tells a voter little." *Id.* at 70 (upholding campaign disclosure requirements in order to inform the voters of the interest that specific candidates represent).

The use of descriptive ballot language as proposed by the amendment under consideration is legally indistinguishable from party labels and is intended to assist voters in making informed decisions.

CONCLUSION

For the foregoing reasons, the amici curiae States respectfully request this Honorable Court to grant Arkansas' petition for writ of certiorari, and set the case for briefing and argument or, in the alternative, grant the petition and summarily reverse the judgment of the lower court.

Respectfully submitted,

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